

THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 2009 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

ALTAFBHAI IBRAHIMBHAI DODHIYA - Applicant(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MR HARSHIT S TOLIA for Applicant(s) : 1,
MR AY KOGJE, APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/05/2007

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order of externment passed by the Competent Authority on 9.5.2006.

2. A show cause notice under section 59 of the Bombay Police Act came to be issued against the petitioner in which the authority narrated three criminal cases pending against the petitioner. In the show cause notice, the Competent Authority also referred to the statements of secret witnesses recorded against the petitioner. It is not in dispute that against the said show cause notice, the petitioner made a representation on 18.8.2005. However, the Competent Authority passed the impugned order of externment on 9.5.2006. Learned advocate Shri Tolia for the petitioner submitted that the Competent Authority passed the externment order nearly after 8 months of petitioner replying to the show cause notice. He submitted that the delay has remained unexplained which would be fatal to the order. It was further submitted that the Competent Authority has not taken into consideration the fact that in one out of three cases referred to in the show cause notice, the petitioner has already been acquitted by the time the order of externment has been passed. It was further submitted that two out of three criminal cases were lodged in the year 2003 and third one was filed on 8.2.2005. The order of externment passed on 9.5.2006 on the basis of such stale material was not justified.

3. Learned AGPP Shri Kogje opposed the petition and submitted that the Competent Authority has passed the order on the available material on record which calls

for no interference.

4. Having heard the learned advocates appearing for the parties, I find that there has been considerable delay in passing the order of externment after the petitioner made his representation to the show cause notice. Delay of more than 8 months has not been explained. Learned single Judge of this Court the case of **D.B.Vihol v. Department of Commissioner of Police**, 2006 (1) GLH 513, was pleased to quash the order of externment on account of unexplained delay of about 5 months. I additionally also find that two cases relied upon by the Competent Authority had arisen in the year 2003 and third one in February 2005. Thus the incidents were not in close proximity to the order of externment passed. On all these grounds, the impugned order cannot be sustained.

5. In the result, the petition is allowed. The impugned order of externment is quashed. Rule is made absolute.

Direct service is permitted.

(Akil Kureshi, J.)

(vjn)